



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

OFFICE OF  
ENFORCEMENT AND  
COMPLIANCE ASSURANCE

MEMORANDUM

**TO:** Barry E. Hill, Director, Office of Environmental Justice ("OEJ")  
Office of Enforcement and Compliance Assurance ("OECA")

**FROM:** Theodore J. Kim, Legal Counsel, OEJ/OECA /s/ *Ted Kim*

**DATE:** July 6, 2006

**RE:** "Environmental Justice in the News" for the Week Ending July 7, 2006  
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This memorandum summarizes select environmental justice news actions for the period beginning May 11, 2006 through the week ending July 7, 2006. The summary is limited to Lexis/Nexis searches conducted using the query: "(environment! w/2 (justice or racism or equity or disproportionate or disparate)) or (environment! w/25 minorit! or low\*\*\*income) or (executive order 12898) or (civil right! w/25 environmental) or ("fair housing act" w/25 (environment! or zon!))." Please note that multiple articles covering the same topic were not included. Similarly, articles on international or foreign-based environmental justice issues were not included, unless they specifically pertained to the United States.

1. **News Items.**

The following news was particularly noteworthy:

- **"Environmental Justice Unit Still A Work in Progress in Alabama," Associated Press (July 4, 2006).** According to the article, the Alabama Department of Environmental Management ("ADEM") has still not established an environmental justice unit, despite the Alabama Environmental Management Commission's unanimous approval in August 2004 to hire someone to oversee the creation of such a unit. ADEM, which continues to search for someone, recently lost its prior environmental justice coordinator, who retired for health reasons. An environmental justice unit was envisioned to handle such issues as the "positioning of chemical plants near low-income communities." ADEM stated that it has identified a strong candidate for the position; however, it is "seeking funding, applying for grants, and [undertaking] all the other things to developing [such a] program." Critics, who have previously claimed that ADEM does not take environmental justice issues seriously,

assert that funding “will always be an issue, but it shouldn’t be an excuse.” (See Related Article on Page 3).

- **“EJ Activists’ Effort May Prompt Change in California Air Toxics Bill,” Clean Air Report (June 29, 2006).** According to the article, environmental justice groups in California have joined with industry in opposition to Assembly Bill 1101 (“Bill”) that “would regulate the State’s largest ports, airports, and railyards under the air board’s toxics ‘hot spots’ program.” The Bill, which was introduced on June 20, 2006, requires the California Air Resources Board (“CARB”) “to include ports, airports, and railyards among areas subject to the Air Toxics Hot Spots program, which collects emissions data, identifies facilities’ localized impacts, and notifies residents of significant risks from airborne toxics.” The environmental justice groups assert that the Bill solely relies on flawed risk assessments to regulate toxic air contaminants (“TAC’s”), which undermines environmental protection in the most heavily polluted communities. Specifically, the groups argue that CARB’s current risk assessment process relies on unrealistic assumptions about the toxicity of TACs and their exposure pathways, as well as about emission inventories. To resolve the issues, the environmental justice groups identified a list of amendments that would ease their concerns; however, the California Air Pollution Control Officers Association and the Bill’s author have not included these amendments. The Bill awaits hearing in the Senate’s Committee on Environmental Quality.
- **“EPA to Address Equity in Disaster Responses with Next Steps Unclear,” Clean Air Report (June 29, 2006).** According to the article, the United States Environmental Protection Agency (“EPA”) will consider environmental justice issues in its emergency response activities. On June 20, 2006, Granta Nakayama, the Assistant Administrator for EPA’s Office of Enforcement and Compliance Assurance (“OECA”), addressed the National Environmental Justice Advisory Council (“NEJAC”) and articulated his hope to get “environmental justice ‘hardwired into emergency response.’” However, the article noted that it remains unclear how EPA will change its emergency response procedures to address how disasters affect low-income or minority populations. Previously, a working group of the NEJAC noted that Hurricane Katrina demonstrated the disparate impact of environmental events on low-income and minority populations and issued draft recommendations that “EPA improve how it addresses harm to low-income and minority populations following the Gulf Coast hurricanes.” NEJAC members, however, believe that identifying vulnerable populations represents one key step to improving EPA’s disaster response. They acknowledged that EPA’s authority was limited in certain areas, such as mold remediation, which hampered its ability to address certain serious public health hazards.

- **“Hearing Planned on Port Recycling: South End Residents Are Invited to Comment on Expansion Plans,” Times Union (Albany, N.Y. June 29, 2006) at B3.** According to the article, residents in the South End of Albany were scheduled to meet with Waste Management of New York on June 29, 2006 to discuss Waste Management’s proposal to expand a recycling center at the Port of Albany. Specifically, Waste Management sought State approval to increase the amount of its recyclables from 500 tons per day to 749 tons per day. The State’s Department of Environmental Conservation, however, had some concerns, including the fact that the recycling center was located in an “environmental justice area,” which required Waste Management to take additional steps to inform residents of its proposal. The article noted that environmental justice areas “are in primarily low-income and predominantly minority communities that traditionally have borne the brunt of environmental impacts from being used as dumping grounds for pollution.”
- **“Remarks Anger Some Environmentalists; ADEM Official Says Minorities Manipulated,” Birmingham News (AL June 28, 2006) at 1B.** According to the article, Trey Glenn, the Director Alabama’s Department of Environmental Management (“ADEM”), delivered a speech that angered some environmental justice advocates who believed that Mr. Glenn’s remarks represented a “really low blow” and lacked intellectual sophistication. Specifically, Mr. Glenn addressed a group of attorneys at an Alabama State Bar event and articulated that certain private environmental groups “seem to exist only to complain that ADEM doesn’t have an environmental justice unit.” In addition, Mr. Glenn noted that “ADEM has been trying to form an environmental justice unit but has been able to get only a small amount of funding from [EPA] because the complainers have gotten the grants, instead.” In accusing some of the environmental groups of using information on minorities and pollution to manipulate the unsophisticated, Mr. Glenn asserted that ADEM’s goal was to “create a unit that can provide sound, unbiased, scientific information to those groups of people possibly lacking the intellectual sophistication to discern that information offered for baser, manipulative reasons.”
- **“NRC Licenses New Enrichment Plant,” Electricity Daily (June 28, 2006).** According to the article, the United States Nuclear Regulatory Commission (“NRC”) approved a license for Louisiana Energy Services (“LES”) to build a uranium enrichment plant in Eunice, New Mexico. The license represents the first for a commercial nuclear power installation in thirty years. LES had previously tried to develop a similar project in Louisiana. However, in that instance, the NRC “nixed the site, located in a predominantly-black community, on the basis of ‘environmental justice,’ a standard the [NRC] has never used again.” In a prepared statement, LES articulated its hope to be “a good corporate citizen” when it begins at full capacity in around 2012.

- **“Push to Trash Garbage Plan; 100 Community Members Attended a Hearing Yesterday to Oppose Facility on Upper East Side,” Newsday (N.Y. June 27, 2006) at A18.** According to the article, residents of Upper East Side New York made a last ditch effort on June 26, 2006 to prevent the opening of a trash-export facility, which they claim would burden them with dirty garbage trucks. The site, which is part of Mayor Michael Bloomberg’s 20-year Solid Waste Management Plan to require each borough to handle its own trash, would be one of a network of marine transfer stations to move trash export from trucks to barges and railways. The plan would ease the burden on “the Bronx and Brooklyn, which has long endured a larger share of transfer stations and trucks in mostly minority neighborhoods.” Accordingly, Councilman Charles Barron of Brooklyn, “who has been outspoken about what he called environmental racism, criticized [the East Side residents] for pointing out that a nearby housing complex has mostly minority residents . . . [that] will also suffer from the proposed trash facility.” Councilman Barron found the East Side residents’ concerns to be “disingenuous” because they did not complain previously when the trash would only affect minority communities and not their own.
- **“Environmental Protection Agency; Environmental Justice Collaborative Problem-Solving Cooperative Agreement Program,” Federal Grant Opportunities (June 23, 2006).** According to the announcement, EPA planned to “award [grants to] eligible organizations that plan to utilize the Environmental Justice Collaborative Problem-Solving Model and partner with other stakeholders to address the affected community’s environmental and/or public health issues.” EPA expects to make at least ten awards of up to \$100,000. The applications are due by October 23, 2006. More information on the grants may be found at: <http://www.epa.gov/compliance/environmentaljustice/grants/index.html>.
- **“Environmental Protection Agency; Environmental Justice Small Grants Program,” Federal Grant Opportunities (June 23, 2006).** According to the announcement, the Environmental Justice Small Grants (“EJSG”) Program represents a multi-statute program that will help communities “understand and address their exposure to multiple environmental harms and risks. The project’s primary purpose must be: (1) to build the collaborative partnership; (2) to identify the local environmental and/or public health issues to be addressed; and (3) to envision solutions and empower the community through education, training, and outreach.” EPA expects to make at least ten awards of up to \$50,000 under the EJSG Program. The applications are due by October 23, 2006. More specific information on the grants may be found at: <http://www.epa.gov/compliance/environmentaljustice/grants/index.html>.
- **“Can Grant Improve Ashland, Cherryland?” Inside Bay Area (CA June 21, 2006).** According to the article, Alameda County in California

received \$150,000 from an “environmental justice” grant from the State’s Department of Transportation to improve living conditions in Ashland and Cherryland. The money, which will be available in August and must be spent over a 12 to 18 month period, is earmarked for long-term planning to help identify the communities’ needs and work on solving problems. In addition, the grant provides that special attention will be paid to Latinos, who make up the majority of the 35,000 residents in Ashland and Cherryland. The article noted that such attention was necessary because language and cultural barriers “usually discourage Latinos from voicing their concerns and needs.”

- **“Small Utah Tribe Bitterly Divided Over Storing Radioactive Waste,” Associated Press (June 21, 2006).** According to the article, the Goshute Indian Tribe (“Tribe”) in Skull Valley, Utah is bitterly divided over a proposed lease to store radioactive used fuel on its reservation. The Tribe’s leader, Leon Bear, favors storing the 40,000 tons of reactor waste on the reservation, since the Tribe would receive millions of dollars in rent over the next 40 years. However, critics, including some Goshutes, argue that storing waste on the reservation represents “environmental racism at its rawest.” Although the Bureau of Indian Affairs of the Department of the Interior approved the lease in 1997, the deal has yet to be consummated due to various legal and regulatory hurdles. Consummation of the deal appears close, as evidenced by the Nuclear Regulatory Commission’s issuance of a license in February. While Mr. Bear believes the waste will improve the Tribe’s living conditions, some members of his tribe disagree. They assert that placement of the nuclear waste site onto their lands, where most of the households are below the national poverty, is contrary to the Goshute tradition and will destroy the Tribe’s harmony level and tranquility.
- **“Getting Back to Roots; Volunteers Plan to Catalog Every Tree on Boston Public Streets By This Fall. The Survey Will Certainly Help the City Manage Its Tree Population, But Some Also Hope that, Combined with Census Data, the Massive Inventory Will Help Uncover Greenery’s Many Benefits to Residents’ Health,” Boston Globe (June 18, 2006) at A1.** According to the article, a major survey effort, known as the Greater Boston Urban Forest Inventory, has begun as part of a growing environmental justice movement in Boston. Through this effort, in which volunteers have begun to count and catalog each of the estimated 50,000 trees on public streets in Boston, the City will receive information that it needs to manage its tree population. Moreover, “the data bank will also serve a more unexpected purpose: [p]roject leaders plan to use it to establish links between neighborhood greenery and residents’ health, safety, and psychological wellbeing, and expect the results to bolster the case for planting more trees in poor neighborhoods.” The project has received \$150,000 in private donations and has been ongoing for three years. Ultimately, “urban leaders are setting new goals

for increasing greenery, citing a growing body of research that links trees to a wide range of benefits, including lower crime rates, better mental focus in children, longer life spans, and decreased air pollution.”

- **“New York State Power Plant Siting Law Is Still Mired in Legislative Wrangling,” Global Power Report (June 15, 2006) at 20.** According to the article, lawmakers in New York are debating whether to reauthorize Article X, which expired in 2002. Article X was a siting law for power plants that “provided a single process for obtaining all permits from various state agencies . . . [and offered] a predictable process that could lead to a license in about a year.” Passage of the law is important to some regulators, who believe that New York needs more power plants, due to shortages in some areas. Alternatives to Article X have been proposed in the State’s Assembly and Senate. Assembly Bill, A 10371-C, increased attention on unspecified local environmental justice issues, which may deter plant investment by making the process more arduous for investors. However, compromise between the Assembly and State Bills seems unlikely at this point due to a lack of commonality.

## 2. **Recent Litigation.**

- No noteworthy **“Recent Litigation”** was identified for this time period.

## 3. **Regulatory/Legislative/Policy.**

The following items were most noteworthy:

### A. **Federal Congressional Bills and Matters.**

- No noteworthy **“Federal Congressional Bills and Matters”** were identified for this time period.
- No noteworthy **“*Miscellaneous House and Senate Congressional Record Mentions of Environmental Justice*”** were identified for this time period.
- **Federal Register Notices.**

— **DOI, Final Environmental Impact Statement for the Nottawaseppi Huron Band of Potawatomi Indians’ Proposed 79 Acre Fee-to-Trust Transfer and Casino Project in Emmett Township, Calhoun County, MI, 71 *Fed. Reg.* 37,093 (June 29, 2006).** The Bureau of Indian Affairs (“Bureau”) of the United States Department of Interior (“DOI”) announced that it intends to file a Final Environmental Impact Statement (“FEIS”) for the proposed 79 acre fee-to-trust land transfer and casino project in Emmett Township, Calhoun County, Michigan. The FEIS is

available for public comment, which is due by July 31, 2006. The FEIS evaluated five Action Alternatives, including the No Action Alternative. Among other things, the FEIS considered environmental justice. The Bureau will complete a Record of Decision (“ROD”), which will identify the action to be implemented. The ROD will be issued on or after July 31, 2006.

- **USDA, Highwood Generating Station, 71 Fed. Reg. 37,037 (June 29, 2006).** The United States Department of Agriculture (“USDA”) announced that the Rural Utilities Service (“RUS”) will issue a Draft Environmental Impact Statement (“DEIS”) for the Highwood Generating Station. The DEIS will evaluate “the potential environmental impacts and alternatives to the Southern Montana Electric Transmission and Generation Cooperative, Inc. (“SME”) application for a RUS loan guarantee to construct a 250 megawatt coal-fired power plant near Great Falls, Montana.” Public comment is due 45 days following the publication of the notice in the *Federal Register*. The notice asserted that among the “adverse, but non-significant impacts of the Proposed Action include those on . . . environmental justice.”

- **DOT, Office of Commercial Space Transportation; Notice of Availability and Request for Comment on a Draft Environmental Assessment (“EA”) for the Blue Origin West Texas Commercial Launch Site, 71 Fed. Reg. 36,870 (June 28, 2006).** The Federal Aviation Administration (“FAA”) of the United States Department of Transportation (“DOT”) announced the availability of, and requested comments on, a Draft Environmental Assessment (“EA”) for the Blue Origin West Texas Commercial Space Launch Site. FAA requests comments by July 27, 2006. Under the proposed action, FAA “would issue one or more experimental permits and/or licenses to Blue Origin to launch reusable launch vehicles (“RLVs”) on suborbital, ballistic trajectories. In addition, Blue Origin would construct a private launch site.” The EA analyzed potential impacts of the proposed action to the environment, including environmental justice impacts.

- **EPA, National Pollutant Discharge Elimination System – Final Regulations to Establish Requirements for Cooling Water Intake Structures at Phase III Facilities, 71 Fed. Reg. 35,006 (June 16, 2006).** EPA published a proposal on November 4, 2004 that contained numerous options to control cooling water intake structures at existing Phase III facilities and at new offshore oil and gas extraction facilities. The current rule, which takes effect on July 17, 2006, “establishes categorical section 316(b) requirements for intake structures at new offshore oil and gas extraction facilities that have a design intake flow threshold of greater than 2 million gallons per day and that withdraw at least 25 percent of the water

exclusively for cooling purposes.” EPA believed that it was better to continue to rely on the existing National Pollutant Discharge Elimination System (“NPDES”) program, “which implements section 316(b) for existing facilities not covered under the Phase II rule on a case-by-case, best professional judgment basis. This final action constitutes Phase III of EPA’s section 316(b) regulation development.” With regard to environmental justice, the rule considered Executive Order 12898. The notice asserted that “[d]ue to the offshore location of these facilities, EPA does not expect that this rule would have an exclusionary effect, deny persons the benefits of the participating in a program, or subject persons to discrimination because of their race, color, or national origin.” In fact, EPA expects that all populations, including minority and low-income populations, would benefit from the rule, based on the improved environmental conditions that would result.

- **EPA, Triazine Cumulative Risk Assessment; Notice of Availability, 71 Fed. Reg. 35,664 (June 21, 2006).** EPA announced the availability of its cumulative risk assessment for the chlorinated triazine group of pesticides and solicited public comment by August 21, 2006. The Food Quality Protection Act (“FQPA”) required EPA to undertake a cumulative risk assessment to evaluate whether all registered uses of chlorinated triazine pesticides presented risk to food or drinking water, as well as hazards associated with non-occupational exposure. The chlorinated triazine group includes atrazine, simazine, and propazine. To help address potential environmental justice issues, EPA seeks, among other things, “information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical, unusually high exposure to chlorinated triazine pesticides, compared to the general population.”

- **DOD, Intent to Prepare a Draft Environmental Impact Statement for the Proposed Implementation of Interim Water Storage Contracts Associated with the Southeastern Federal Power Customers Settlement Agreement, at Lake Sidney Lanier/Buford Dam, GA, 71 Fed. Reg. 34,901 (June 16, 2006).** The United States Army Corps of Engineers (“Corps”), Mobile District, of the United States Department of Defense (“DOD”) announced its intent to prepare a DEIS to address the “proposed implementation of interim water storage contracts at Lake Sidney Lanier/Buford Dam, GA, as contained in a settlement agreement associated with the *Southeastern Federal Power Customers, Inc. v. Secretary of the Army* lawsuit.” The DEIS will address changes in water management operations at the reservoir project and other potential changes to downstream reservoir projects, which will result from the settlement agreement. The notice urges public

participation in the process and specifically articulated that “minority, low-income, disadvantaged, and Native American groups are urged to participate in this . . . environmental analysis process.”

B. **State Congressional Bills and Matters.**

- **California, Senate Bill 1205, introduced on January 25, 2006 by Senator Martha M. Escutia (D-District 30). Status: Rereferred to Assembly Committee on Appropriations on June 27, 2006.** This Bill, the “Children’s Breathing Right’s Act,” would increase the maximum civil penalties and criminal fines for specified violations of air pollution laws. The Bill seeks to “improve the enforcement of [the State’s] air quality laws and ensure that penalties are not so low as to be a minor inconvenience to a serious and chronic air polluter, [the State’s] children’s right to clean and healthy air can be better protected, as can the right to environmental justice.” In addition, the Bill would mandate the establishment of a state website to track violations. A percentage of the penalties collected would be used to fund children’s health and asthma initiatives.
- **California, Senate Bill 1505, introduced on February 23, 2006 by Senator Alan S. Lowenthal (D-District 27). Status: Rereferred to Assembly Committee on Transportation on June 20, 2006.** This Bill declares the Legislature’s intent that when the California Hydrogen Highway Network Blueprint Plan (“Plan”) is implemented, it will be done in a clean and environmentally responsible manner. The Bill would require the State Air Resources Board to adopt regulations that will ensure that state funding for the production and use of hydrogen contributes to the reduction of greenhouse gas emissions, criteria air pollutants and toxic air contaminants. The Bill includes, among other things, a requirement that the California Environmental Protection Agency’s Environmental Justice Advisory Committee meet at least annually to discuss the production and distribution of hydrogen fuel in the State.
- **California, Assembly Bill 32, introduced on December 6, 2004 by Congressman Fabian Nunez (D-District 46). Status: Rereferred to Senate Committee on Environmental Quality on June 22, 2006.** This Bill enacts the California Global Warming Solutions Act of 2006 and requires the California Air Resources Board (“CARB”) to report and verify greenhouse gas emissions. In addition, the Bill authorizes CARB to monitor and implement regulations to reduce emissions of gases that cause global warming and calls on CARB to adopt a statewide greenhouse gas emissions limit that would gradually impose a limit between 2010 and 2020. Moreover, the Bill mandates that the Governor establish an interagency task force to coordinate investments of state moneys and state

programs to reduce emissions of greenhouse gases, promote economic growth, make information publicly available to assist sources of greenhouse gases to meet the requirements of this Bill. The interagency task force should establish an advisory committee that includes such stakeholders as environmental justice groups. Finally, the Bill requires the California Energy Commission to update its inventory of emissions of greenhouse gases to supplement information collected by CARB to maintain a reasonably comprehensive inventory of California's emissions of greenhouse gases.

- **California, Assembly Bill 2490, introduced on February 23, 2006 by Assembly Member Ira Ruskin (D-District 21). Status: In Senate. Read first time. To Senate Committee on Appropriations on June 27, 2006.** This Bill would enact the California Toxic Release Inventory Program of 2006 to require Cal-EPA to establish the California Toxic Release Inventory (“TRI”) Program (“Program”) if the Secretary of Cal-EPA determines that a specified change has been made to the federal Emergency Planning and Community Right-to-Know Act of 1986 (“EPCRA”), which would make EPCRA less stringent or would reduce or lessen any reporting requirement. The Program would impose the same, or more stringent, requirements as EPCRA. The Bill responds to EPA’s proposed changes to its TRI regulations. Specifically, EPA promulgated a notice in the *Federal Register* on October 4, 2005 that proposed to raise the threshold reporting amounts of toxic chemicals and decrease the frequency of required reporting. Since the proposed changes would, among other things, “create further environmental justice challenges by placing an unfair burden for residents in low-income areas, where chemical plants and other polluters are often located,” the Bill was introduced to ensure that the “citizens of California have access to timely and accurate data about toxic releases.” The Bill “would require the Agency, no later than one calendar year after the date when the Secretary makes that determination, to adopt regulations to implement the program that are identical in application to the federal regulations in effect on January 1, 2006.”
- **Florida, House Bill 7131, introduced on March 15, 2006 by the House Committee on Environmental Regulation. Status: Approved by Governor on June 22, 2006.** The Bill amends various provisions of the Florida Brownfield Redevelopment Act. The Bill increases the amount of credit, from 35 percent to 50 percent, that may be applied against intangible personal property tax and corporate income tax for the voluntary cleanup costs of a contaminated brownfield or dry-cleaning site. In addition, the Bill increases the percentage and amount of tax credit that a taxpayer may receive in the final year of the cleanup as an incentive to complete the cleanup. Finally, the Bill also amended Section 376.80(4), Brownfield Program Administration Process, of the Florida Statute to

require “[l]ocal governments or persons responsible for rehabilitation and redevelopment of brownfield areas [to] establish an advisory committee or use an existing advisory committee that has formally expressed its intent to address redevelopment of the specific brownfield area for the purpose of improving public participation and receiving public comments on rehabilitation and redevelopment of the brownfield area, future land use . . . community safety, and environmental justice.”

- **State Regulatory Alerts.**

— **New York, 2006-24 N.Y. St. Reg. 99 (June 14, 2006).** The Office of Environmental Justice of New York’s Department of Environmental Conservation announced that it will accept applications for Environmental Justice Community Impact Research Grants until July 18, 2006. The Grants, which will range from \$2,500 to \$25,000, are earmarked “for projects that address exposure of communities to multiple environmental harms and risks.” The Grants will be available to “local groups that focus on addressing environmental and/or public health problems in their communities. Applicants must be located in their proposed project areas and must have over 50 percent of their members living in those areas.”